

Amalgamated Development Limited Vs. State of West Bengal

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Court : Kolkata

Decided On : Jan-13-2006

Reported in : 2006(3)CHN51

Judge : Bhaskar Bhattacharya and ; Pravendu Narayan Sinha, JJ.

Acts : West Bengal Land Reforms Act - Section 18; ;[West Bengal Land Development and Planning Act, 1948](#) - Sections 4(1) and 8(1)

Appeal No. : F.A. No. 222 of 1995

Appellant : Amalgamated Development Limited

Respondent : State of West Bengal

Advocate for Def. : None

Advocate for Pet/Ap. : Debasish Mitra, Adv.

Disposition : Appeal dismissed

Judgement :

Bhaskar Bhattacharya, J.

1. This first appeal is at the instance of a referring claimant and is directed against an Award dated 17th March, 1994 passed by the Additional Special L. A. Judge, 3rd Court, Alipore in L.D.P. Case No. 159 of 1967(V) thereby allowing the said

reference case in part and enhancing the valuation of the acquired land to Rs. 825/- per cottah. By the said judgment the learned L. A. Judge further directed payment of interest at the rate of 6 per cent on the excess amount from the date of taking possession of the acquired land till the deposit of the same in Court. The referring claimant was also given solatium at the rate of 15 per cent for compulsory acquisition of land in addition to the market value of the acquired land at the rate of 2 per cent per annum of such market value for the period commencing on and from the date of publication of notification, namely, 30th January, 1958 or the date of taking of possession of the land, whichever is earlier.

2. The matter has a chequered career.

3. For resettlement of the refugees from the East Bengal, the Government of West Bengal acquired the plots in question under the provision of [West Bengal Land Development and Planning Act, 1948](#) and the possession of those lands was taken on 9th September, 1961, but before that, the Gazette Notification dated 30th January, 1958 was published. The Collector treated some of the acquired lands as Danga land and the balance as Doha and valued the Danga land at the rate of 344/- per cottah and the Doha land at the half of the rate fixed for the Danga land and accordingly, passed an award.

4. Being dissatisfied, the appellant filed an application under Section 18 of the West Bengal Land Reforms Act to the Special Land Acquisition Judge. The Land Acquisition Judge after taking evidence came to the conclusion that all the acquired plots were developed household plots and not ordinary Danga land and that on 31st December, 1946, the value of the acquired plot per cottah was Rs. 1250/-. In that judgment, there was also provision for solatium at the rate of 15 per cent of the valuation of the acquired land plus interest at the rate of 6 per cent from the date-of taking possession of the acquired land till the date of deposit of the amount determined by the Court.

5. Being aggrieved, the State of West Bengal preferred an appeal before this Court and a cross-objection was filed by the referring claimant praying for enhancement of the award made by the learned Special Judge.

6. A Division Bench of this Court after hearing the parties set aside the award passed by the learned Special Judge and remanded the matter back to the learned Special Judge for rehearing. The Division Bench was of the view that the learned Special Judge committed an error in holding that the acquired land was to be valued according to the market value of those lands as on 31st December, 1946 as the second paragraph of Clause 8 of proviso to Section 8(1) of the [West Bengal Land Development and Planning Act, 1948](#), as amended, had been declared ultra vires and void. The Division Bench specifically held that for the purpose of assessing the compensation of the acquired land, the valuation should be arrived at on the basis of market value as on the date of publication of notification under Section 4(1) of the said Act. The Division Bench further held that there was no material before the Court to ascertain what would have been the valuation of the acquired property on the date of publication of the notification under Section 4(1) of the said Act and accordingly, the matter was remanded back after giving opportunity to the parties to lead fresh evidence to highlight the market value of the acquired land on the date of publication of Gazette Notification i.e. January 31, 1958.

7. Pursuant to the said order of remand, when the matter came back to the learned Special Judge, none of the parties led any further evidence but merely placed the certified copy of a previous judgment dated 30th January, 1984 passed in different cases bearing L.D.P. Case Nos. 180 and 187 of 1967 and also a certified copy of the judgment of the Division Bench dated 31st January, 1985 passed in appeal preferred against the said judgment.

8. The learned advocate appearing on behalf of the referring claimant by relying upon the decision of the Supreme Court in the case of Bhag Singh and Ors. v. Union Territory of Chandigarh reported in : AIR 1993 SC222 and also in the case of Union of India and Anr. v. Raghubir Singh reported in : [1989]178ITR548(SC) submitted that for the purpose of assessing the valuation of the acquired land, the Court should take into consideration the judgment delivered by this Court in those cases because the acquired land in this case is of the same vicinity and having same facility as regards those involved in those cases.

9. By the Award impugned herein, the learned Special Judge refused to rely upon the said decision on the ground that property involved in the present case is situated in the Mouza Arakpur whereas the property involved in the judgment relied upon by the referring claimant was situated in Mouzas Chandpur and Shibpur. The learned Trial Judge further came to the conclusion that no evidence having been adduced indicating that the disputed property is in the vicinity of those properties, he was not in a position to rely upon the valuation arrived at in those cases. Ultimately, the learned Special Judge relied upon the sale deed of a land situated in the Mouza Arakpur of the year 1946 indicating that at that point of time, the valuation of the land was Rs. 275/- per cottah and the Court was of the opinion that in course of twelve years, as on the date of notification, the valuation of the property had increased by three times and as such, the Court fixed the valuation at Rs. 825/- per cottah.

10. The Court disposed of the matter by enhancing the valuation to Rs. 825A per cottah and the award of the Collector was modified accordingly.

11. Being dissatisfied, the referring claimant has come up with the present appeal.

12. Mr. Mitra, the learned Advocate appearing on behalf of the appellant has vehemently contended before us that the learned Special Judge erred in law in refusing to rely upon the judgment of the Division Bench by totally overlooking the fact that the property involved therein was also acquired under the self-same notification and as such, there was no bar in assessing the valuation of the disputed property at that rate.

13. After going through the said judgment, we find that in the said judgment, the properties involved were situated in Mouzas Chandpur and Shibpur respectively whereas in the present case the property is situated in Arakpur. We have already pointed out that no evidence has been adduced showing that the property involved in this appeal is adjacent to those Mouzas or that the facility available in respect of those plots are similar to that involved in the present appeal.

14. Such being the position, in our view, the learned Special Judge rightly refused to rely upon the said judgment as a yardstick for the purpose of assessment of the

market value of the property involved herein.

15. Moreover, we find that in the absence of any further evidence as regards the exact position, nature and quality of the lands involved in those two cases, the learned Trial Judge rightly refused to take into consideration the valuation arrived at in those matters merely because the lands involved therein were covered by the same notification. The reassessment of the valuation at the rate triple the one appearing on a deed of 1946 in respect of the same Mouza in the absence of other materials on record was quite reasonable.

16. We, thus, find no merit in the present appeal and the same is, accordingly, dismissed. In the facts and circumstances, there will be, however, no order as to costs.

Pravendu Narayan Sinha, J.

17. I agree.

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